

### REMARKS

Claims 1-38 were pending in the instant application as of the issuance of the Office Action mailed on January 17, 2006. According to the foregoing amendments, claims 1, 2, 4-8, 18-24 and 27 have been cancelled, without prejudice, and claims 3, 9, 10, 25 and 34-38 have been amended. Claims 25, 26 and 28-35 have been withdrawn from consideration as being directed to non-elected method claims capable of being rejoined in accordance with the provisions of MPEP § 821.04. Accordingly, after the amendments presented herein have been entered, claims 3, 9-17, 25, 26 and 28-38 will remain pending.

Support for the amendments to the claims may be found throughout the specification, for example, in Table 1 (at page 1) of the specification, and in the claims as originally filed. No new matter is introduced by these amendments.

### RESTRICTION REQUIREMENT

Claims 1-38 are subject to a restriction requirement. The Examiner has required restriction, under 35 U.S.C. § 121, between the following inventions in the above-identified application:

- Group I: Claims 1-17 and 36-38 drawn to polynucleotides, vectors and host cells comprising the polynucleotides, and methods of expressing proteins encoded by the polynucleotide, classified in class 536, subclass 23.7;
- Group II: Claims 18-24, drawn to polypeptides, classified in class 53, subclass 350;
- Group III: Claims 25-34, drawn to a method of making a chemical, classified in class 435, subclass 69.1; and
- Group IV: Claim 35, drawn to a diagnostic method for *Corynebacterium diphtheriae*, classified in class 435, subclass 6.

The Examiner has further required, under 35 U.S.C. § 121, that Applicants elect a single polynucleotide sequence and corresponding amino acid sequence.

Accordingly, Applicants hereby elect Group I (claims 1-17 and 36-38, drawn to polynucleotides, vectors and host cells comprising the polynucleotides, and methods of expressing proteins encoded by the polynucleotide) and the polynucleotide of SEQ ID NO:5 (encoding for the polypeptide of SEQ ID NO:6), *without traverse* for continued examination in the present application. Applicants' election of the foregoing subject matter is without prejudice

to Applicants' rights to pursue non-elected subject matter in other applications. Furthermore, Applicants reserve the right to traverse the restriction between the non-elected groups in this or a separate application.

The Examiner has further required the election of a single species of chemical from the claimed species listed in claim 16. Accordingly, Applicants hereby elect, for search purposes only, the species of proteinogenic and nonproteinogenic amino acids. In this regard, it is Applicants' understanding that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. §1.141 *et seq.* Accordingly, upon allowance of the elected species, Applicants request that the search be extended to the remaining species. Applicants' election of the foregoing species is without prejudice to Applicants' rights to pursue non-elected subject matter in this and other applications.

With regard to the remaining withdrawn claims, it is Applicants' understanding that once a composition claim is found to be allowable, the pending method claims that depend from or otherwise include all the limitations of an allowable composition claim will be rejoined in accordance with the provisions of MPEP § 821.04. Accordingly, Applicants respectfully request rejoinder of claims 25, 26 and 28-35 should any of the pending composition claims be found to be allowable.

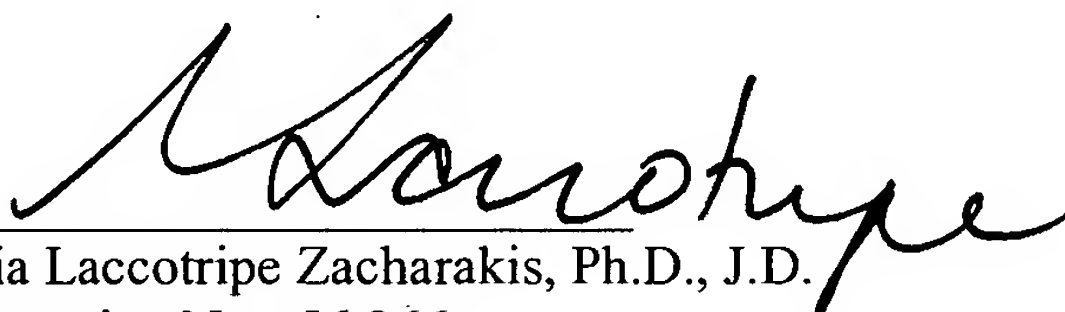
**SUMMARY**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the present filing to Deposit Account No. 12-0080 under Order No. BGI-125CPCN, from which the undersigned is authorized to withdraw.

Applicants respectfully submit that the above-identified application is in condition for allowance. If a telephone conversation with Applicants' attorney would expedite prosecution of the above-identified application, the Examiner is urged to call Applicants' Attorney at (617) 227-7400.

Dated: February 21, 2006

Respectfully submitted,

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